

Application No 09/901,988  
Amendment dated 15 July 2005  
Reply to Office Action of 18 April 2005

**Amendments to the Drawings:**

Please replace the informal drawings with the attached replacement formal drawings.

Attachments: Three (3) Sheets of Formal Drawings

## REMARKS

In the above-mentioned Office Action, claims 1, 2, 3, 9-12, and 16-18 were rejected under Section 102(e) over *Baum*. Claim 4 was rejected under Section 103(a) over *Baum*, and claim 5 was rejected under Section 103(a) over the combination of *Baum* and *Masters*. Claims 6-8, 13-15, and 19-20 were acknowledged to recite allowable subject matter, but objection was made to the claims for being dependent upon rejected base claims. Additionally, drawings in compliance with Rule 1.121(d) were required to be submitted.

The Applicant gratefully acknowledges the Examiner's indication of allowable subject matter of claims 6-8, 13-15, and 19-20. New claim 21 is set forth herein that includes the recitations of claim 13 together with its intervening claim. The Applicant defers placing others of the claims indicated by the Examiner to recite allowable subject matter pending consideration of amendments set forth herein with respect to independent claims 1 and 16.

Claims 1 and 16 have been amended in manners believed better to distinguish the invention of the present application over the references used against the claims, taken alone or in combination.

Support for the amendments to claims 1 and 16 is found in the specification, e.g., on page 18, lines 9-16.

With respect to exemplary claim 1, the claim has been amended now to recite that the calculator selects the first switching threshold and that the first switching threshold is changeable responsive to changes in the selected communication indicia. Method claim 16 has been analogously amended and also further recites the operation of selectively changing the modulation parameter responsive to changes in the switching threshold.

*Baum*, cited against the claims, fails to disclose dynamic selection of a switching threshold. And, therefore, the reference also fails to disclose a calculator that calculates a switching threshold that is changeable responsive to changes in communication indicia. While the Examiner relies upon column 5, lines 12-14 for disclosing a calculator and column 3, lines 56-64 for selection by a calculator of a first switching threshold, there appears to be no disclosure in this section, or in other portions of the reference, of dynamic selection of a

Application No 09/901,988  
Amendment dated 15 July 2005  
Reply to Office Action of 18 April 2005

switching threshold. In fact, review of the cited portions indicates that *Baum* pertains merely to a manner by which to distribute excess resources over a plurality of planned links. There would appear also, therefore, to be no disclosure of a manner by which to select a first switching threshold used in the selection of a modulation parameter, as recited in the claims.

*Masters*, cited merely for showing a feedback mechanism also fails to disclose such structure, or corresponding methodology, recited as now-amended.

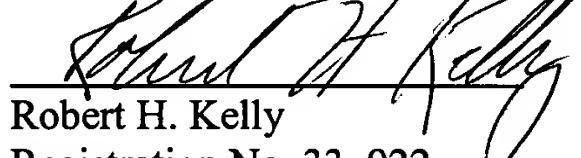
As claims 2-5, 9-12, and 17-18 include all of the limitations of their respective parent claims, these claims are believed to be distinguishable over *Baum* and *Masters*, taken alone or in combination, for the same reasons as those given with respect to their parent claims.

Substitute drawings believed to be in conformity with Rule 121 are enclosed herewith.

In light of the foregoing, claims 1-21 are believed to be in condition for allowance. Accordingly, examination or re-examination, as appropriate, and consideration for allowance of the claims is respectfully requested. Such early action is earnestly solicited.

Respectfully submitted,

Dated: 15 July 05

  
\_\_\_\_\_  
Robert H. Kelly  
Registration No. 33,922

SCHEEF & STONE, L.L.P.  
5956 Sherry Lane, Suite 1400  
Dallas, Texas 75225  
Telephone: (214) 706-4200  
Fax: (214) 706-4242  
[robert.kelly@scheefandstone.com](mailto:robert.kelly@scheefandstone.com)